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ABSTRACT

With the many changes in technology since the Copyright Act was passed, following that law has become increasingly complex. Educators need to understand the law, and how to apply it in various situations. This fastback addresses some of the key issues of copyright law with particular attention to new technologies. After a brief history of the copyright law is given, penalties for copyright infringement are outlined. Next is a description of fair use conditions for photocopying, videotape, taping broadcast television programs, cable television programming, satellite television programming, and distance learning networks. Discussion then moves to computers and copyright, discussing multimedia, materials placed on electronic reserve by educators, and electronic publishing. Contains 32 references: 13 books and articles, 3 Internet sites, and 6 laws and Congressional reports. (AEF)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

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Hope Roland Botterbusch

Hope Roland Botterbusch is a specialist in educational copyright. She is past chairperson of the Copyright Committee of the Association for Educational Communications and Technology and past coordinator of the "Copyright & You" column in the professional journal, *Tech Trends*.

Botterbusch currently works for the Department of Marine Science at the University of South Florida, where she coordinates distance learning and educational outreach programs. She also is president of a consulting firm dedicated to education and training in new technologies. She is a consultant for educational television, the design of instructional materials, and copyright issues in education and training.

She has been a K-12 classroom teacher, school library media specialist, district-level audiovisual/television supervisor, college and university professor, and manager of an educational access television channel. Botterbusch is the author of educational materials and professional journal articles and has contributed to a book on school library media centers. She also is the co-author of four computer software programs for media management and a contributor to award-winning, corporate-sponsored educational materials.

Series Editor, Donovan R. Walling

Copyright in the Age of New Technology

by
Hope Roland Botterbusch

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Why Educators Should Know the Copyright Law

The Copyright Act protects the rights of an author for life plus 50 years. That seems simple, and thus it might appear that all that educators need to do is to read the Copyright Act of 1976, as amended in Title 17 U.S.C.A. §§101-810, and abide by the law. Unfortunately, it is not so simple. And with the many changes in technology since the Copyright Act was passed, following that law has become increasingly complex.

Educators do need to understand the law, and they need to learn how to apply it in various situations. Teachers frequently need to use copyrighted materials in their classes, but they must be careful not to violate the rights of those who own the copyrights on those materials. Unfortunately, the guidelines that help teachers to use those materials are still being formulated, especially for the new electronic media.

Copyright protection is intended to stimulate creativity by ensuring that the author receives the mone-

tary rewards from his or her work. It is the exclusive right of authors to protect against the unauthorized use of their work. Works covered by copyright include:

1. Literary works;
2. Musical works, including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audiovisual works;
7. Sound recordings; and
8. Architectural works.

Copyright does not extend to the ideas in a work; it protects only the author's expression of an idea, not the idea itself. However, the line between idea and expression often is blurred — especially in the visual media — and this often results in accusations of copyright infringement.

One question that frequently is asked by educators who attend workshops on copyright is, "Why must I be familiar with and uphold the Copyright Law?" There are two important reasons. The first is a matter of professional ethics. The second reason is that it *is* the law, and there are penalties for violating it.

Another question frequently asked is, "Who is going to catch me?" As a later section of this fastback will show, educators have been caught for violating copyrights. In fact, educators have been sued for copyright violations even though they did not know that they were doing

anything wrong. Thus, in addition to the desire to do the ethical thing, there are other incentives for understanding copyright law.

Readers should bear in mind that the information contained in this fastback is the informed opinion of a copyright specialist and should not be considered as nor substituted for legal advice.

This fastback addresses some of the key issues of copyright law with particular attention to new technologies. For information specifically about music copyright law, readers may wish to obtain fastback 368 *Music Copyright Law in Education*, by Robert Henley Woody, III, and Robert Henley Woody, II.

A Brief History of Copyright Law

Copyright law has a long history in the United States. The first U.S. copyright statute was enacted on 30 May 1790. The statute read: "An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein, mentioned" (1 Stat. 124). This act's protection did not extend to other artistic works, such as paintings, sculptures, and dramatic works.

As new technologies were developed, the copyright statute underwent frequent revisions. In 1802 the statute was amended for authors "who shall invent and design, engrave, etch or work . . . any historical or other print or prints." In 1831 the statute was extended to musical compositions. In 1856 the owner of the copyright for a printed drama was given the exclusive right of public performance, and in 1865 photographs and negatives were added to the list of copyrightable works. In 1870 paintings, drawings, chromos, statuettes, statuary, and models or designs intended as works of fine art were added to the list. In 1874 protection of engravings,

cuts, and prints was limited to "pictorial illustrations or works connected with the fine arts." In 1909 the owner of the copyright for sheet music was given the exclusive right to make mechanical reproductions of the music, subject to a complex compulsory licensing provision. And in 1912 compilations that previously were thought to have been included within the category of photographs were added to the statute.

By the early 1900s, the copyright law was complex and cumbersome. Apparently, it also did not serve authors very well. In 1909, Mark Twain complained to the press:

> Only one thing is impossible for God: to find any sense in any copyright law on this planet. . . . Whenever a copyright law is to be made or altered, then the idiots assemble.

In 1976, President Ford signed into law a major revision of the Copyright Act. The 1976 revision expanded the definition of what could be copyrighted:

> Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

There have been revisions to the Copyright Act since 1976, mostly in the areas of computer programs and architectural works. For example, the 1990 Architectural Works Copyright Protection Act extended copyrights to include architectural works for the first time (Kitch and

Perlman 1992, pp. 565-66). And Public Law 96-517 extended protection to computer software.

Another change in the copyright law occurred on 1 March 1989 when the United States joined the Berne Convention for the Protection of Literary and Artistic Works. The Berne Convention is an international copyright law that originally was signed in 1886. At that time, the United States opted not to join, instead developing its own system of international copyright relationships.

Joining the Berne Convention mandated two important changes in U.S. copyright law. The first change was that the term of protection for a copyrighted work was extended from 28 years, with the option for a second 28-year renewal, to the life of the author plus 50 years. The second important change was the elimination of the mandatory copyright notice printed on copyrighted works.

Work continues to protect the rights of authors in the age of new and emerging technologies. In September 1995, a task force assembled by President Clinton released a white paper, titled "Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights" (Lehman 1994). This report makes a number of important recommendations for amendments to the copyright law.

These recommendations have been summarized in an open letter from more than 100 law professors led by James Boyle of American University (that letter can be accessed through www.clark.net/pub/rothman/boyle.htm). In the opinion of these professors, the white paper would:

- Make it a copyright violation to read a document on the screen of one's Web browser.
- Undermine the concept of "fair use."
- Make online providers, such as America Online, strictly liable for violations of copyright by their members, thus making it necessary for providers to monitor their users.
- Make people civilly liable if they tamper with any copyright protection device or system.
- Make it a federal crime to remove any copyright management information imbedded in any document.

According to the open letter, such organizations as AT&T, the American Library Association, the National Writers Union, and the National Education Association also find the white paper to be a "radical measure which has negative implications for public, journalistic and scholarly access to information, for free speech and for privacy."

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Penalties for Copyright Infringement

In order to prove copyright infringement, the copyright holder must show that the infringer copied the essence of a copyrighted work. In addition, the court must be shown that the alleged infringer had access to the copied work and that the alleged infringing work is so similar to aspects of the copyrighted work that it is unlikely to have been created independently (Kitch and Perlman 1992, p. 623).

Copyright penalties carry statutory damages ranging from not less than $500 to not more than $20,000 for each work in the infringement. In cases where the copyright owner sustains the burden of proving infringement and the court finds that infringement was committed willfully, the court may increase the award of statutory damages to a sum of not more than $100,000. Courts also may award reasonable attorney's fees to the prevailing party.

However, instead of statutory damages, the copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, as well as

any profits made by the infringement. Courts also can order the destruction of all illegal copies of a copyrighted work and of all the materials used to make such copies.

Statutory damages are assessed "in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use, if the infringer was an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment" (Title 17 U.S.C.A. §505).

There also is a criminal copyright infringement, which carries penalties of as much as five years in prison and a $250,000 fine.

Though some educators may believe that they cannot be caught when copying someone's works for a class, that is not true. For example, the Association for Information Media and Equipment (AIME) has a toll-free telephone number for people who want to report copyright violations involving the illegal videotaping of television programs. In more than one case, a "whistle-blower" within the school district alerted AIME to illegal taping by teachers. AIME has received settlements from several schools whose teachers were involved with off-air taping violations.

Several important court cases involving copyright violations have been decided in the last several years. An examination of some of those cases can be instructive.

The landmark case of copyright violation in education involved the Learning Corporation of America, Time-Life Films, and Encyclopaedia Britannica versus the

Board of Cooperative Educational Services (BOCES). The BOCES agency served about 100 schools in western New York state. BOCES employees recorded movies off television and made multiple copies. They also created catalogues of those movies and distributed the catalogues and the movies throughout the district. In 1983 the court ruled that the systematic copying of television programs reduced the potential sale of the films and did not fall under "fair use" guidelines. The ruling against BOCES included fines and court costs totaling $78,515.71 (*Encyclopaedia Britannica* v. *Crooks*, 447 F. Supp. 243, W.D.N.Y. 1978).

In 1974 Dennis J. Fitzpatrick of FEL Publications, a Los Angeles-based company that publishes folk worship music aimed at young audiences, filed suit against the Archdiocese of Chicago. Fitzpatrick charged that 238 of the archdiocese's 447 churches produced illegal hymn books using songs copyrighted by FEL. After the suit was filed, the teachers at one parochial school wrote the words to religious folk songs on the blackboard; then they switched to photocopying to save time. The teachers did not think they were doing anything wrong. Also after the lawsuit was filed, the archdiocese allegedly issued a ban against using the firm's music. In 1984 a federal jury awarded FEL $190,400 for copyright infringement and $3 million in damages.

Reproduction of copyrighted cartoon characters is a favorite activity of teachers, and this type of reproduction is clearly a violation of the copyright law. Copying a cartoon character falls under the definition of a derivative work, which is an art reproduction that is "recast,

transformed or adapted." Only the copyright owner is entitled to make a derivative work. Thus the Disney Corporation works diligently to stop educators from reproducing Disney characters on the walls in school buildings and on bulletin boards. Where Disney characters have been painted on walls, the schools have been ordered to repaint the walls in order to erase the Disney characters.

Perhaps the most celebrated copyright case involved copying services that, at the request of instructors, prepare course packs that consist of selections from copyrighted materials. The defendants argued that their service was a "fair use," but the courts rejected that argument in the context of high-volume, organized, and repetitive copying where the course packets take the place of textbooks or other printed materials. (See *Princeton University Press* v. *Michigan Document Services, Inc.*, 855 F. Supp. 905, E.D. Mich. 1994; and *Basic Books Inc.* v. *Kinko's Graphics Corp.*, 758 F. Supp. 1522, S.D.N.Y. 1991.)

While fair use issues are most important to educators, they need to be aware that there are patent and trademark issues as well. It is illegal to copy or adapt a business trademark. Though a trademark is not the same as a copyright, it is protected by the Trademark Revision Act of 1988. Thus the North Salinas High School in California received a "cease and desist order" when they adapted the logo of the Hard Rock Cafe restaurant chain. The school had been using their "Hard Work Cafe" logo on T-shirts and at breakfasts to reward students who did well in school.

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Educators also should know that buildings can be protected by trademarks, as well as by copyright. An obvious example is Disney's "Sleeping Beauty's Castle," but many other buildings also are protected. Though fewer than 100 buildings are registered as trademarks, state laws often protect others. Even public buildings are protected. For example, the Rock and Roll Hall of Fame and Museum, designed by I.M. Pei, currently is involved in a lawsuit against a Cleveland photographer who sold posters that included an image of the building.

Because of the chances of a lawsuit, many educators might avoid using copies of any copyrighted work. However, the copyright laws also provide protections for educators and researchers who need to use a copyrighted work. Under the Fair Use Guidelines, educators may use copies of copyrighted materials under specific, limited conditions.

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Fair Use

In March 1976, a committee of U.S. congressmen and representatives of the Authors League of America and the Association of American Publishers created the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals" (H.R. 2223, §107). Commonly referred to as the "Fair Use Guidelines for Education," this agreement states the minimum conditions under which educators can use copyrighted works without prior permission.

The factors considered for fair use include:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use on the potential market for or value of the copyrighted work.

The fact that a work is unpublished is immaterial. Unpublished works also are protected under these guidelines.

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Photocopying

Educators in nonprofit education institutions can make photocopies of copyrighted works for classroom use. When doing so, educators should follow the federally adopted guidelines that are part of the legislative history of the Copyright Act. The following is a summary of Section 107 of H.R. 2223.

Teachers preparing to teach a class may make, or have made, a single copy of a book chapter; an article from a newspaper or journal; a short story, essay, or short poem; or a chart, graph, diagram, cartoon, drawing, or picture from a book, periodical, or newspaper. In addition, teachers can make one copy for each student in a class provided that each copy includes a copyright notice and meets three tests: the brevity test, the spontaneity test, and the cumulative effect test.

The brevity test determines how much of a work can be copied. For a story, essay, or article under 2,500 words, the educator can copy the complete work. For longer works, the educator can copy excerpts of not more than 1,000 words or 10% of the work, whichever is less. However, educators should be aware that some short works, such as children's stories, may be designated as special because they contain illustrations. For these special works, educators may copy no more than 10% of the work.

The suggested maximum for poetry is 250 words. Poems with less than 250 words can be copied in their entirety provided that they are not printed on more than two pages.

The guidelines suggest that not more than one chart, graph, diagram, drawing, cartoon, or picture should be copied per book or issue of a periodical.

The spontaneity test says that the "inspiration and decision to use the work" must occur so soon before the class that it is not feasible to write to the copyright holder for permission to duplicate the work. In addition, the teacher, not an administrator or "higher authority," must request the duplication.

The cumulative effect test suggests that a short story, article, story, or essay may be copied only one time and that not more than three of these items may be from the same collected work or periodical volume during one class term. In addition, not more than a total of nine instances of such multiple copying may be done during a class term.

The photocopies may be used in only one course; copying a work to use in several courses is not likely to be considered fair use. Copying an item for two or more class terms is specifically prohibited.

Teachers are specifically prohibited from making their own anthologies or compilations through photocopying, even if the photocopies are used separately and not bound together. Teachers also may not use photocopies to substitute for buying a work, such as workbooks. And students may not be charged more than the actual cost of copying the material.

The above guidelines apply only to copying works without permission from the copyright holder. Educators should remember that they always can write to publishers for permission to make multiple copies of a work.

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Videotape

The use of videotaped movies and television shows in schools can present special copyright issues. For example, tapes rented from video stores or borrowed from libraries usually are labeled, "For Home Use Only."

The rental of a videotape bearing the "For Home Use Only" warning and used for instructional purposes in a classroom would fall under the Section 110(1) performance exemption of the Copyright Act. However, a rental agreement brings into play the issue of contract law. The rental agent is not the copyright holder and does not have the authority to grant public performance rights. Therefore, education institutions should make their own policies on whether to risk the educational use of the videotapes or attempt to develop agreements with rental agencies (Becker 1992).

A public performance license can be obtained for a modest fee from the Motion Picture Licensing Corporation, (no relation to the Motion Picture Association of America). They can be contacted at 13315 Washington Blvd., Third Floor, Los Angeles, CA 90066-5145; (800) 462-8855. However, this license is good only for showing videos in the school library — not in the classroom, nor in the auditorium, nor on closed-circuit television. The Motion Picture Licensing Corporation will send you a list of producers who participate in the school license agreement. There are no restrictions on the reason for showing the videotapes, whether for education, entertainment, or reward.

There are separate guidelines for using programs taped from television broadcasts. Those guidelines vary

according to whether the program was taped from a commercial broadcast channel, public television, a cable television channel, satellite television, or a distance learning network.

Taping Broadcast Television Programs

The "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes" were ratified in 1981 by the House Subcommittee on the Courts, Civil Liberties, and the Administration of Justice. They are considered a retroactive part of the legislative history of the copyright law and serve as primary criteria when courts assess fair use. However, these guidelines do not have the force of law, and they operate only in the absence of specific licensing agreements.

The following nine guidelines apply to all commercial television broadcasts and some public broadcasts:

1. Videotaped recordings may be kept for no more than 45 calendar days after the recording date.
2. Videotaped recordings may be shown to students only within the first 10 school days of the 45-day retention period.
3. Off-air recordings must be made only at the request of an individual teacher for instructional purposes, not by school staff in anticipation of later requests by teachers.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.

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5. The taped recordings may be viewed after the 10-day period only by teachers to determine whether to include the program in the curriculum in the future.
6. If several teachers request the same program, duplicate copies are permitted to supply the requests, with all copies subject to the same restrictions that apply to the original recording.
7. The off-air recording may not be physically or electronically altered or be combined with others to form an anthology, though the recordings do not need to be shown in their entirety.
8. All copies of off-air recordings must include the copyright notice as recorded on the broadcast program.
9. These guidelines apply only to nonprofit education institutions, which also are "expected to establish control procedures to maintain the integrity of these guidelines."

These guidelines apply only to broadcast television; they do not address cable, satellite, or distance education programming. Broadcast television is defined as those programs transmitted by television stations without charge to the general public, though a broadcast television station may be carried by a cable provider.

Programs transmitted by cable stations, satellite, or distance education operate under different rules regulated by the copyright owners.

Cable Television Programming

Cable television programming does not fall under the fair use guidelines because it is not available free to the

public. Cable television stations dictate their own off-air taping guidelines. These guidelines can be found in such journals as *Cable in the Classroom*, through their respective web sites on the Internet, or by contacting them by telephone. Some of the cable channels with web site addresses that may be of interest to educators are:

A&E	World Wide Web	www.aetv.com
Bravo	World Wide Web	www.bravotv.com
C-Span	World Wide Web	www.c-span.org
	Gopher	gopher c-span.org
	America Online	keyword: CSPAN
	Prodigy	Jump to C-SPAN
CNN	World Wide Web	www.cnn.com
	America Online	keyword: CNN
Cartoon Network	World Wide Web	iquest.com/-schuffle/sghost/
Court TV	World Wide Web	www.courttv.com
Discovery	World Wide Web	www.discovery.com
	America Online	keyword: DSC-ED
ESPN/ESPN 2	World Wide Web	www.espnet.sportzone.com
Family Channel	Compuserve	Go: Y-Drive
	Prodigy	Jump to Family Channel
History Channel	World Wide Web	www.historychannel.com
Learning Channel	World Wide Web	www.discovery.com
	American Online	keyword: TLC-ED
	AskERIC	gopher ericir.syr.edu
	AskERIC	www.ericir.syr.edu
Lifetime	World Wide Web	www.lifetimetv.com
		stratosphere/html
Newstalk TV	World Wide Web	www/newstalk.com
PBS	World Wide Web	www.pbs.org
TNN	World Wide Web	www.cnn.com
Weather Channel	World Wide Web	www.infi.net/

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Satellite Television Programming

Copyright issues with satellite programming are even more complicated. Satellite transmission is another subscription service that is not free to the public. Satellite transmission and distribution is governed by the Communications Act (Title 47, U.S. Code) and currently falls under the jurisdiction of the Federal Communications Commission (FCC).

Educational television satellite networks often transmit programming from a variety of copyright owners. Inquiries must be made for each individual program title. The following is a list of some of the satellite sources of interest to educators:

Achievement TV	Compuserve	Go:Achievetv
EM SET	Phone	(617) 621-0290
Fairfax (FSN)	Phone	(703) 503-7490
MCET	World Wide Web	www.meol.mass.edu:70/0/home
MEU (Mind Extension University)		
	World Wide Web	www.meu.edu
Michigan Gateways	World Wide Web	msu.edu/comptech/gateways
NASA Select TV	World Wide Web	www.nasa.gov/
	World Wide Web	www.spacelink.msfc.nasa.gov/
	World Wide Web	ww.quest.arc.nana.gov/
Oregon ED-NET	Telnet	ednet1.osl.or.gov
SERC (Satellite Educational Resources Consortium)		
	World Wide Web	can.net/~serc
SATLINK	World Wide Web	satlink.nsba.gen.mo.us
Sea World	World Wide Web	bev.net/education/Sea World
Star Network	World Wide Web	esdcom.wednet.edu
TEAMS	World Wide Web	www.teams.lacoe.edu
	Gopher	teams.lacoe.edu
Tie-In TV	Phone	(404) 967-6568

Univ. of Georgia Continuing Education Center
World Wide Web gactr.uga.edu
USDLC (United Star Distance Learning Consortium)
World Wide Web 198.213.93.7/star/main.html

Distance Learning Networks

Distance learning networks include ITFS (Instructional Television Fixed Service) systems, which are a type of microwave transmission; low-power television systems, another microwave transmission; and closed-circuit television systems found within school buildings or on a college or university campus. When acquiring programming to transmit on these networks, transmission licenses should be negotiated at the time of purchase, lease, or rental for each title. In addition, educators using these networks should be informed about the off-air taping rights for each title transmitted.

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Computers and Copyright

Print and audiovisual works were addressed first in the copyright law. But with the advancement of technology came a new set of questions concerning copyright. What about computer programs, the Information Superhighway, or cyberspace? How does a copyright holder protect his or her work from being downloaded, duplicated, compiled, or made into a derivative work? And how do educators provide access to copyrighted works for their students while still being fair to copyright holders?

In 1974 Congress established the National Commission on New Technological Uses of Copyright Works (CONTU) to consider to what extent computer programs should be protected by copyright law. CONTU defined a computer program as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result" (CONTU 1979). The CONTU report also stated that "the placement of any copyrighted work in a computer is the preparation of a copy." Because a computer program

must be put into the computer to be used, that means the user must copy a copyrighted work. That posed a special problem for copyright law.

In 1980 Congress accepted the changes recommended by CONTU. Thus it is not a copyright infringement to make or authorize the making of another copy or adaptation of a computer program provided that:

1. Such a new copy or adaptation is created as an essential step in the use of the computer program in conjunction with a machine and that it is used in no other manner, or
2. Such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful (§117).

Computer software usually comes with a specific license for use. Thus software purchased for school use must remain at the school and cannot be taken home, even for the educator to learn to use it. Similarly, if a school buys only five copies of a program, those copies can be loaded onto only five computers. However, educators can negotiate other license agreements with the software company.

For the purpose of copyright, computer programs are classified as literary works. It is well established that copyright protection extends to a computer program's source and object codes. But in infringement cases regarding computer programs, the "idea" must be distinguished from the "expression" of the idea. In other

words, the purpose or function of a computer program is its idea, and everything that is not necessary to that purpose or function would be a part of the expression of the idea (Kitch and Perlman 1992, pp. 682-84).

This premise was tested in the case of *Lewis Galoob Toys, Inc.* v. *Nintendo of America, Inc.* (U.S. Court of Appeals, 9th Circ., 1992). Lewis Galoob Toys manufactures the "Game Genie," a device that allows the player to alter up to three features of a Nintendo game. Nintendo sued, arguing that their games are protected as audiovisual works and that the Game Genie is a derivative work of Nintendo. The judge found that the Game Genie did not violate any Nintendo copyrights because it merely enhanced the audiovisual displays of the Nintendo game cartridges and did not recreate the game. This case may become important to educators when they produce multimedia works for classroom use.

Multimedia and Copyright

Multimedia productions generally combine text, graphics, still images, animation, audio, and video from a variety of sources with a computer authoring system that results in a single presentation. Teachers and students have been using multimedia authoring products to create their own multimedia programs. This technology was not considered when the 1976 Copyright Act was written. So how do educators apply the old law to this new technology?

That question currently is being debated by such organizations as the Consortium of College and Univer-

sity Media Centers and the Association of American Publishers, as well as education organizations and software publishers. These groups have been working for several years to agree on fair use guidelines.

The Educational Fair Access and the New Media National Conference was held in Washington, D.C., on 15-17 June 1994 to address fair use and multimedia materials created in noncommercial education environments. Educators, copyright specialists, education institutions, professional associations, and software publishers were given the opportunity to voice their opinions about the use of copyrighted multimedia materials. The text of the presentations are published in *What's Fair: A Report on the Proceedings of the National Conference on Educational Fair Access and the New Media* (Agency for Instructional Television 1994).

At a satellite teleconference presented by the PBS Adult Learning Satellite Service on 21 September 1995, a draft of "Fair Use Guidelines for Educational Multimedia" was presented. These draft guidelines included: 1) student use, 2) instruction in multimedia development, 3) face-to-face curriculum-based instruction, 4) peer conferences, 5) remote instruction (distance learning), 6) time limitations, and 7) limitations on the portion of copyrighted works that can be used. These guidelines had not been published in a final form at the time of this writing (a preliminary draft can be accessed at media.uscs.edu/Media Services/Fair Use.html). In addition to the completion of the guidelines, the task force will seek approval of the guidelines by Congress by attaching them to relevant legislation, if possible. If that

is not possible, then educators should realize that the guidelines are only a benchmark, not law.

However, in February 1996 a meeting that involved the Consortium of College and University Media Centers and the Association of American Publishers led to disagreements over how copyrighted works can be used in multimedia productions. That meeting, part of the Conference on Fair Use, led to draft guidelines that would affect the use of these programs for distance learning. The proposals limit all uses of these multimedia productions except in classroom situations with the teacher present. The proposed guidelines specify that if an institution cannot guarantee that the program cannot be copied, then students can have unsupervised access to a multimedia program for only 15 days after it is first shown to a class; afterward, students must visit a library or similar facility to view a program. The guidelines also tightly limit the amount of copyrighted works that can be used in a multimedia program (Jacobson 1996).

Electronic Library Reserve and Copyright

Another difficult area for copyright in cyberspace concerns the practice of placing materials on "electronic reserve." College instructors long have placed printed copies of book chapters and journal articles on reserve in libraries so that students would be sure to have access to these items. However, new technology allows users to scan printed material into a computer and disseminate it over networks. This has brought special concerns for copyright holders.

The guidelines currently proposed by the Conference on Fair Use allow educators to put journal articles, book chapters, and excerpts from longer works on electronic reserve. However, these readings may constitute only a small proportion of the assigned readings for a course and must include warnings about copyright and further electronic distribution of the work. In addition, the instructor would require permission from the copyright holder to use the materials for more than one semester (Crews 1996).

The guidelines also would restrict the dissemination of works placed on electronic reserve. Only an instructor may request that materials be placed on electronic reserve, and only the instructor's students may access them. The proposed guidelines suggest that passwords or other methods be used to ensure that only the students can access the reserve materials (Crews 1996).

These guidelines still are in a state of flux, with representatives from education organizations and publishers working to reach a consensus. The final fair use guidelines for computers could be either more restrictive or more expansive than those that have been proposed so far.

Electronic Publishing and Copyright

The Internet and World Wide Web pose a new set of copyright concerns for authors, publishers, and users. Educators should recognize that even if materials found on the Internet and World Wide Web are not registered with the Copyright Office, those materials still are protected by the copyright laws and are not considered in the public domain unless that is specifically stated.

One important question concerns how an author can protect his or her work from being downloaded, duplicated, compiled, or made into a derivative work.

The American Society of Journalists and Authors, a national organization of leading freelance writers, provides an answer in the ASJA Contracts Committee publication, *E-Wrongs About E-Rights: Electronic Publishing, Fiction and Fact*. This publication warns about "cyberfables" that often are repeated by publishers who want an author to allow them to duplicate a work electronically. It also describes what an author should know about electronic publishing. For a copy of this publication, contact ASJA at 1501 Broadway, New York, NY 10036; (212) 997-0947, fax (212) 768-7414, e-mail 75227.1650@compuserve.com.

In a nutshell, ASJA recommends that an author's publishing contract give the author the "non-exclusive right to exercise, by itself or through third parties, the rights granted herein in any form in which the work may be published, reproduced, distributed, performed, displayed or transmitted (including, but not limited to, electronic and optical versions and in any other media now existing or hereafter developed) in whole or in part, whether or not combined with works or others, in perpetuity throughout the universe. . ."

The law of cyberspace promises to be a rapidly changing area of the law. Technological developments will keep all those involved in the field alert to needed changes in the law to allow for innovation while protecting the rights of individuals.

Resources

Books and Articles

Agency for Instructional Television. *What's Fair: A Report on the Proceedings of the National Conference on Educational Fair Access and the New Media*. Bloomington, Ind., 1994.

Association of American Universities and the Association of Research Librarians. *AAU/ARL Task Force on Intellectual Property Rights in an Electronic Environment*. Washington, D.C., April 1994. arl.cni.org/aau/IPI.html

Becker, Gary H. *Copyright: A Guide to Information and Resources, 1992*. Write to Gary Becker, P.O. Box 951870, Lake Mary, FL 32795-1870; (407) 333-2037.

"Copyright & You." Column in *Tech Trends*, published by the Association for Educational Communications and Technology, 1025 Vermont Avenue NW, Suite 820, Washington, DC 20005; (202) 347-7834. E-mail: maryt@AECT.org

Crews, Kenneth D. "What Qualifies as 'Fair Use'?" *Chronicle of Higher Education*, 17 May 1996, pp. B1-B2.

Gasaway, Laura. "White Paper: A Mixed Bag." *Tech Trends* 40, no. 6 (November/December 1995): 6-8.

Jacobson, Robert L. "The Furor Over 'Fair Use'." *Chronicle of Higher Education*, 10 May 1996, pp. A25, A30, A34.

Kitch, Edmund W., and Perlman, Harvey S. *Legal Regulation of the Competitive Process*. Rev. 4th ed. Westbury, N.Y.: University Casebook Series, 1992.

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Lehman, Bruce A. "Intellectual Property and the National Information Infrastructure: A Preliminary Draft of the Report on the Working Group on Intellectual Property Rights." Washington, D.C., July 1994. www.uspto.gov/text/pto/nii/ipwg.html

National Commission on New Technological Uses of Copyrighted Works (CONTU). *Final Report of the National Commission on New Technological Uses of Copyrighted Works, July 31, 1978*. Washington, D.C.: Library of Congress, 1979.

National Information Infrastructure Taskforce, Working Group on Private Policy and Intellectual Property Policy of the Information Policy. *Committee Report*. Washington, D.C., 1993.

Nimmer, Melville B., and Nimmer, David. *Nimmer on Copyright: A Treatise on the Law of Literary, Musical and Artistic Property, and the Protection of Ideas*. New York: Matthew Bender & Co., 1988.

Public Broadcast Service, Adult Learning Satellite Service. *Multimedia Fair Use Guidelines: The Educational Gateway to the Information Age*. Washington, D.C., 21 September 1995.

Internet Sites

Register of Copyrights, Copyright Office, Library of Congress, Washington, DC: www.benedict.com/fund.htm

Copyright Clearance Center, 27 Congress St., Salem, MA 01970: www.copyright.com/img/1_demo.gif

Copyright listserv, a discussion group for people interested in copyright issues: listproc@cni.org (Type: SUBSCRIBE and give your name.)

Laws and Congressional Reports

Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals. §107 of H.R. 2223.

Berne Convention for the Protection of Literary and Artistic Works, Paris Text, 1971.

Copyright Act of 1976 as Amended 17 U.S.C.A. §§101-810; 1001-1010.

Federal Communications Act. Title 47 U.S.C.A.

Patent Act. 35 U.S.C.A. §§1-376.

Trademark Act of 1946 ("Lanham Act") as Amended 15 U.S.C.A. §§1051-1127 (§§1-46).

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Phi Delta Kappa Fastbacks

Two annual series, published each spring and fall, offer fastbacks on a wide range of educational topics. Each fastback is intended to be a focused, authoritative treatment of a topic of current interest to educators and other readers. Several hundred fastbacks have been published since the program began in 1972, many of which are still in print. Among the topics are:

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Phi Delta Kappa Educational Foundation

The Phi Delta Kappa Educational Foundation was established on 13 October 1966 with the signing, by Dr. George H. Reavis, of the irrevocable trust agreement creating the Phi Delta Kappa Educational Foundation Trust.

George H. Reavis (1883-1970) entered the education profession after graduating from Warrensburg Missouri State Teachers College in 1906 and the University of Missouri in 1911. He went on to earn an M.A. and a Ph.D. at Columbia University. Dr. Reavis served as assistant superintendent of schools in Maryland and dean of the College of Arts and Sciences and the School of Education at the University of Pittsburgh. In 1929 he was appointed director of instruction for the Ohio State Department of Education. But it was as assistant superintendent for curriculum and instruction in the Cincinnati public schools (1939-48) that he rose to national prominence.

Dr. Reavis' dream for the Educational Foundation was to make it possible for seasoned educators to write and publish the wisdom they had acquired over a lifetime of professional activity. He wanted educators and the general public to "better understand (1) the nature of the educative process and (2) the relation of education to human welfare."

The Phi Delta Kappa fastbacks were begun in 1972. These publications, along with monographs and books on a wide range of topics related to education, are the realization of that dream.